IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

CRL.A.No. 646 of 2007(A)

SC.157/2006 of ADDL.ASST.SESSIONS COURT, THALASSERY
CP.116/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, MATTANNUR

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APPELLANT:

PARAIKANDY SREEDHARAN,
C.NO.4458, CENTRAL JAIL, KANNUR.

BY ADV. ADV.V.MANOJ KUMAR(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
C.I. OF POLICE, MATTANNUR POLICE STATION,
C.R.NO.134/04.

BY PUBLIC PROSECUTOR SRI.C.M. KAMMAPPU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13.7.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.646 OF 2007-A

Dated this the 13th day of July, 2007.

JUDGMENT

The appellant faced trial for the offences punishable under Sections 452 and 376 of I.P.C in SC.155/2006 on the file of the Additional Assistant Sessions Court, Thalassery. The case against the appellant is that on 13.3.20024 at about 7 p.m when PW1 was in her house at Keezhallur amsom of Edayyannur desom, the appellant trespassed into her house and committed rape on her. To prove the above charge prosecution examined 13 witnesses and relied on Exts.P1 to P17. Mos 1 to 3 were also produced. On closing the prosecution evidence, the appellant was questioned under Section 313 of the Code. Denying the prosecution charge, the appellant had stated that he is innocent and he was implicated by PW1. However, on considering the evidence, the trial court found the appellant guilty under Section 452 and 376 of I.P.C and he was convicted thereunder and sentenced to undergo R.I for five years and to pay a fine of Rs.10,000/= under Section 376 with default sentence of payment of the fine, to undergo S.I for a further period of two years and he was further sentenced to undergo R.I for one year and to pay a fine of

Rs.2,000/= under Section 452 with default sentence of payment of fine, to undergo a further period of S.I for two years. The sentences were also ordered to be run concurrently. Further it was ordered that if the fine is realised, a sum of Rs.10,000/= shall be paid to PW1 under Section 357(1) of Cr.P.C. The benefit of Section 428 of Cr.P.C was also allowed. The above conviction and sentences are challenged in this appeal. This appeal is filed through the jail authorities and since the appellant is not having a counsel of his own choice a State brief panel member has been appointed to argue the case for and on behalf of the appellant. This Court heard the counsel appearing for the appellant and the Public Prosecutor appearing for the State.

The main contentions raised against the appellant are as follows:

Firstly it is contended that the trial court had committed serious error in placing reliance on the evidence of PW1 without having any other corroborated piece of evidence. Secondly, it is contended that the trial court had not considered the question of identity of the person as the accused who committed rape on PW1. Thirdly it is contended that the medical evidence adduced by the prosecution did not prove that

PW1 was subjected to have any forceful sexual intercourse. Lastly it is contended that the sentence awarded against the petitioner is excessive.

2. In the light of the contentions raised by the appellant the question to be decided in this appeal is whether the findings entered by the trial court on evidence are justifiable or not. The trial court relied on the evidence of PW1 the victim, PW2 the daughter of the sister of PW1 who had supported the evidence of PW1 to a certain extent. The trial court also placed reliance on the evidence of PW3 and PW13 the medical officers who attended PW1. The evidence of investigating officers is also accepted by the trial court. PW1 is the victim who had given evidence before the court that she was living alone in her house and she is an unmarried women and on the day of the incident as her house was not electrified she was using kerosene lamps. She had stated that on 13.3.2004 on the day of the incident at about 7.30p.m while she entered into the central room of her house holding a lamp, somebody caught hold of her from behind and when she look back, she saw the appellant who was a local coconut climber. She had further stated that immediately, the appellant forcefully laid her on the central room though she tried to resist. She was moved by force and laid down and committed

rape on her. This witness has further stated that on tighting the appellant behind her, she became unconscious and she could not take any resistance or even to utter any sound. However, after half an hour, nearly at about 8 p.m she regained consciousness and she noted that there was pain on her private parts and that apart she was noted that her maxi was stained with blood. This witness has further stated that her dress was seen removed upwards and she was having bleeding. However, on regaining consciousness she took out a jeep and went to the house of PW2 and there from she was taken to a local doctor named Prabhakaran who had given an injunction for bleeding. The next morning as PW1 was found tired, PW2 the daughter of her sister asked her what was the reason for her tiredness and at that time she told PW2 that she was raped by the appellant. On the advice of PW2, PW1 was taken to the General Hospital, Mattannur by the husband of PW2 and where she was examined by PW3. PW3 advised her to go to the Medical College Hospital as there was no doctor for giving Anesthesia at Mattannur hospital. So she was referred to the Medical College, Kozhikode. PW1 was admitted on 14.3.2004 in the Kozhikode Medical college, and she was treated there up to 16.3.2004. This witness has further stated before the court that she had given Ext.P1

statement to the police at the medical college on the basis of which a crime was registered against the accused. The criticism against the evidence of PW1- the victim is that she had not stated till 14..3.2004 as the appellant was the person who committed rape on her. Further criticism against the evidence of PW1 is that even at the Mattannur hospital, it was not revealed that the name of the appellant as the person who committed rape on her. The evidence of this witness has been considered by the trial court and the reason for not revealing the name of the appellant to anybody till 14.3.2004 has been considered by the trial court. It was also noted by the trial court that PW1 had a case that the appellant used to show gesters the signs of sexual intercourse even prior to the date of the incident whenever the appellant used to come to the nearby property for plucking coconut. Apart from that PW1 had a special case that she was afraid of the appellant as the appellant is a terror to the women folk of the area. However, PW1 had given sufficient excuse for not revealing the name of the appellant till 14.3.2004. PW2 – daughter of the sister of PW1 also supported the evidence of PW1 regarding involvement of the appellant in the commission of the crime. She had stated before the court that PW1 came to her house in the night of 13.3.2004 and informed that she was having bleeding

and immediately she wanted medical treatment. Hence, she was taken to the local doctor who had given an injunction for minimising the pain which she was suffered on the assumption that the bleeding was mighty be due to the monthly menstruation. However, PW2 had stated before the court that as she had noted that PW1 had tired in the morning she asked her why she was seen so tired. At that time PW1 had revealed that she was raped by the appellant and this fact was revealed to the husband of PW2 also who had taken PW1 to the Mattannur hospital. Though in the hospital the name of the appellant was not revealed to the doctor as it was reported that, she was raped by somebody in the night. That information might have been furnished by the husband of PW2. That apart, it is not a ground for rejecting the evidence of the victim. From the evidence of Pws 1 and 2, the trial court is fully justified in finding that the appellant was the person who committed rape on PW1 on the day of the incident on 13.3.2004. In this context, the evidence of Pws 3 and 13 assumes importance. PW3 was the Assistant Surgeon of the Mattannur hospital. She had stated before the court that she had examined PW1 on 14.3.2004 and had noted certain injuries in Ext.P2 wound certificate. Apart from Ext.P2, PW3 had stated before the court that she had noted the following features

on the body of PW1. "Local anemia bleeding was pineed. Fresh tear on the chette vaginal anemias bleeding pineed clots seen lodged at vault with tear on the wall. Oozing vagine pineed and referred to IMCH as Anesthesian was not available." She had further stated that the injury noted in Ext.P2 would be caused as alleged. Though this witness was cross examined at length, her evidence is not shattered. She had stated that the injuries noted in Ext.P2 can be seen in the first time of sexual intercourse in a married women. She had further stated in the cross examination that there was evidence of internal injury in the vagina. Thus the bleeding. She had also stated that the vaginal swab and the nail clippings were taken for chemical analysis. The evidence of PW13 who treated PW1 at the medical college hospital is also relevant. PW13 had stated that PW1 was admitted in the hospital on 14.3.2004 and discharged on 16.3.2004. Further she had stated that there was an injury on the vaginal region as vaginal tear 15 x 0.5 cm and she was sure that vaginal tear would be caused due to an act of rape. Though it was suggested to PW13 that injuries in Ext.P16 certificate noted by her would also be possible by nail, she had stated that it may be possible. But considering Ext.P17 medical certificate proved by PW13 it is proved that from the nail clippings,

vaginal swab and swab from inner aspect of thigh out of which two items contained human semen and spermotozoa. If so, from the evidence of PW3 and PW13 and as per Exts.P2, P16 and P17 it is clearly proved by the prosecution that PW1 was raped on the day of the incident as alleged by the prosecution. Hence, the finding of the trial court that the appellant is responsible for the offence is on evidence. The trial judge also relied on the evidence of the investigating officers and other official witnesses to prove the scene of occurrence, plan of the house and seizure of the dresses worn by the appellant as well as PW1. It is also proved by the prosecution that the appellant was examined by PW4 and had given his potency certificate - Ext.P3.

In the above circumstances, an over all appreciation of the entire evidence, this Court is of the view that the trial court had rightly found that the appellant is guilty of the offences charged against him. The next question to be considered in this appeal is whether the sentences awarded against the appellant are excessive or not. As per Section 376 of the I.P.C the accused who commits an offence of rape shall be punished for R.I for a term which shall not be less than seven years and shall also be liable to fine. The trial

judge had not given any reason for giving a lesser sentence prescribed in that section to the appellant. However as the trial court had given five years R.I and a fine of Rs.25,000/= this Court is not proposed to enhance the sentence at this stage. This Court is of the view that the sentence awarded against the petitioner is not excessive in any circumstances. Accordingly, the appeal stands dismissed confirming the conviction and sentence ordered against the appellant by the trial court.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO. 646 OF 2007

JUDGMENT

13th July, 2007.